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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,613	11/10/2003	Yoshio Tomoda	42760-0100	4678
21611 7590 06/20/2007 SNELL & WILMER LLP (OC) 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 06/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/705,613

Applicant(s)

TOMODA ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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Claims 22 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kametaka et al (Jp406319475A)

Kametaka et al disclose a method of making fried noodles. The method comprises the steps of adding to the noodles before frying an acidic substance such that the noodles have a pH of 2-4 and frying the noodles to obtain a fried food.

Since the noodles have a pH of 2-4 before frying, it is inherent the noodles will have a pH of 2-4 after frying because frying does not change the pH. Since the noodles are treated with acid, it is inherent the noodles will have the claimed property of decreasing the acrylamide content.

Claims 25, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamazaki et al (JP406000064A).

Yamazaki et al disclose a method of making fried instant noodles. The method comprises the steps of adding to the noodles before frying Kansui and an acid solution to controlling the pH of the noodle filaments to an acidic region and frying the noodles to make fried instant noodles.

Since the noodles are treated with an acidic solution to bring the noodles to an acidic region, it is inherent the pH is below 6.5 because acidic region is below 6.5. Since the noodles before frying have a pH below 6.5, it is inherent the noodles after frying will be below 6.5. The property of decreased acrylamine is inherent because the same additives are added to the noodles as claimed. Kansui is known to be alkaline agents such as potassium carbonate, sodium hydrogencarbonate etc... as disclosed in the specification and known in the art.

Claims 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kametaka et al.

Kametaka et al do not disclose the acid to be lactic acid and malic acid.

Kametaka et al disclose other acids can be used; thus, it would have been obvious to one skilled in the art to use any known acids. Both lactic acid and malic acid are conventional acidic agents.

Claims 28-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Kametaka et al in view of Miller et al.

Kametake et al do not disclose adding acidic substance to the noodles after steaming by spraying or dipping the noodles into acidic substance.

Miller et al teach to coating noodles after precooking and prior to drying with ingredients including acids. The coating enhances the flavor, appearance or texture of the noodles and can be applied by spraying or immersing, (see col. 7 lines 53-67)

It would have been obvious to one skilled in the art to spray the noodles after boiling in Kametaka et al with acidic solution for the reason taught by Miller et al. This coating is entirely consistent with the Kametaka et al disclosure because they teach after boiling, the noodles can be dipped in a seasoning solution containing salt, sodium glutamate etc... As to boiling versus steaming, both are known alternative of precooking the noodle strands as disclosed by Miller on col. 6 lines 7-10. Thus, it would have been obvious to use known alternative technique to carry out the same step.

Claims 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al in view of Miller et al.

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Yamazaki et al do not disclose steaming the noodles and treating the noodles after steaming with acidic solution by spraying or dipping and the type of acids as claimed.

Miller et al teach to coating noodles after precooking and prior to drying with ingredients including acids. The coating enhances the flavor, appearance or texture of the noodles and can be applied by spraying or immersing. Miller et al also teach precooking the noodle strands before drying by boiling or steaming (see col. 6 lines 7-10, col. 7 lines 53-67)

It would have been obvious to one skilled in the art to steam the noodles before frying because such step is conventional in making instant noodles as taught by Miller et al. It would have been obvious to one skilled in the art to spray the noodles after steaming in the Yamazaki et al process with acidic solution for the reason taught by Miller et al. It would have been obvious to select any acid and all the acids claimed are well known to be used with food products.

In the response filed 3/29/07, applicant argues the references cannot legally prevent applicant from patenting the presently claimed new use of the process within the meaning of the statutes of 100, 101. The claims are not rejected under 101, 100. The claimed process corresponds to that of the reference, the recognition of an inherent result realized thereby and which result must necessarily also be obtained in the prior art reference, then the result cannot be basis for patentable distinction. (see In re Best 195 USPQ 430). Applicant also makes reference to the newly added claims. These claims are addressed in the rejection above.

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Applicant also submits a 132 declaration to show unexpected result. The declaration is not found to be persuasive. The reference states that example 1 of the Kametaka et al is prepared. The resulting noodles have reduced formation of acrylamide but are less than acceptable for commercial production because of unsatisfactory consistency and acidic taste. It is not known how example 1 is prepared because the declaration only gives final result without describing how the testing was done. However, more importantly, there is no comparative data between the claimed product and the prior art product. There is no numerical data to show unsatisfactory consistency and acidic taste. The declaration only gives conclusion without showing of evidence how such conclusion is reached.

With respect to the Yamazaki et al reference, the declaration states example 2 is prepared and the noodle has a pH of 7.02. Again, it is not known how the noodles are prepared because the declaration does not show how the experiment was carried out. Furthermore, Yamazaki et al teach alginic acid is also used, not just the salt. The noodles are also treated with acid solution for controlling the pH to an acidic region. It is not known if this done in the testing noodles. Thus, the result shown is inconclusive because it is not known if the exact teaching of the prior art was carried out.

Applicant's arguments filed 3/29/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 13, 2007

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700